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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,774	12/14/2005	Fabien Schweighoffer	BJS-3665-167	5165
23117 7590 04/20/2009 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER JAVANMARD, SAHAR				
ART UNIT 1617		PAPER NUMBER		
MAIL DATE 04/20/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/560,774

Applicant(s)

SCHWEIGHOFFER ET AL.

Examiner

SAHAR JAVANMARD

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7 and 11-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7 and 11-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date 1/23/09
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of the Application

This Office Action is in response to applicant's arguments filed on 10/09/2007. Claim(s) 7 and 11-14 are pending and are examined herein.

Response to Arguments

Applicant's arguments with respect to the 103(a) rejection of claims 7 and 11-14 as being unpatentable over Ikhlef et al. (US Pub. No. 2003/0064374 A1) in view of Dalton et al. (WO 95/11887) has been fully considered but is not persuasive.

Applicant contends that "treating AD does not mean or suggest treating cognitive deficiencies. Furthermore, Dalton does not teach Etazolate. Having the above scientific background, the skilled artisan, reading Dalton, would not be taught that Etazolate (a compound which is distinct from those referred to in Dalton) could be used to treat cognitive disorders. This can only be done with insight, i.e., with knowledge of the present invention."

Examiner respectfully notes that Dalton was employed solely for the teaching that Alzheimer's disease is a memory deficient condition. Thus, it is the opinion of the Examiner that because etazolate is taught to treat Alzheimer's disease, as set forth on record by Ikhlef, that there would be improvements in the symptoms associated with the condition, namely cognitive deficits. It would therefore be obvious to one of ordinary skill

in the art that by treating Alzheimer's disease one would be improving or treating the cognitive deficits.

Furthermore, in response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Thus, at the time of the invention, it was known that etazolate treats Alzheimer's disease (Ikhlef) and that Alzheimer's disease is a memory deficient condition (Dalton).

Applicant further argues that etazolate improves mnemonic and cognitive properties in rats and that these are unexpected properties. This argument is not persuasive as Applicant has not demonstrated any unexpected results. Applicant has demonstrated an improvement in cognitive properties which is a result that would have been obvious in light of the art that was available at the time of the invention and set forth on record in the office action.

The 103(a) rejection of the previous office action has been maintained for reason of record and is included below for Applicant's convenience.

Information Disclosure Statement

The following documents were not available to the Examiner at the time of examination: Documents listed on the Information Disclosure Statement filed 1/23/2009, under "Foreign Patent Documents" and "Other Documents". Crossed references are not available and therefore information referred to therein has not been considered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 7 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ikhlef et al. (US Pub. No. 2003/0064374 A1) in view of Dalton et al. (WO 95/11887).

Ikhlef teaches treating neurodegenerative diseases, including ALS and Alzheimer's disease with the use of etazolate (page 4, [0056]; claims 9, 12-14, and 17).

Ikhlef teaches that etazolate may be administered by any method known in the art preferably injection, namely the intravenous route (page 4, [0058]).

Ikhlef does not teach treating cognitive deficits.

Dalton teaches a class of compounds that are enhancers of memory and cognition and used to treat age-related memory deficit conditions, such as Alzheimer's disease (page 1, lines 19-21).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have known that by administering etazolate as taught by Ikhlef to treat Alzheimer's disease, that one would also have been treating the cognitive deficiencies of the disease. As taught by Dalton, Alzheimer's disease is an age-related memory deficit condition, therefore by treating Alzheimer's disease, one is indeed also treating the cognitive deficiencies of the disease. Therefore, one of ordinary skill in the art, would with a reasonable degree of success, expect that by administering etazolate to treat Alzheimer's disease would also be treating the cognitive deficits associated with the disease.

Conclusion

Claims 7 and 11-14 are not allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAHAR JAVANMARD whose telephone number is (571) 270-3280. The examiner can normally be reached on 8 AM-5 PM MON-FRI (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/S. J./

Examiner, Art Unit 1617

/SREENI PADMANABHAN/

Supervisory Patent Examiner, Art Unit 1617